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OFFICE OF PETITIONS

Attorney Docket No. X-0211

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: Hausheer, F. H.
ASSIGNEE: BioNumerik Pharmaceuticals, Inc.
PATENT NUMBER: 7,176,192 EXAMINER: P. G. Spivack
NUMBER:
ISSUE DATE: February 13, 2007 ART UNIT: 1614
FOR: METHOD FOR TREATING PATIENTS FOR RADIATION EXPOSURE

November 19, 2010
San Antonio, Texas

Maintenance Fee Department
Alexandria, VA 22313

Change of Entity Status and Payment of Fees Under 37 C.F.R. § 1.28(c)

BioNumerik Pharmaceuticals, Inc. (hereinafter "BioNumerik"), Assignee of the above-referenced patent, previously filed all documents and paid all fees in good faith as a Small Entity with respect to the above-referenced patent.

BioNumerik currently employs approximately 41 individuals, far less than the 500 employee threshold at which a company would cease to be eligible for reduced patent fees under 13 C.F.R. § 121.802. However, recent stock purchase transactions involving a possible "affiliate" (a private equity investor who has invested in many other companies) have led BioNumerik to reevaluate its entity status based upon the definition provided in 13 C.F.R. § 121.103(a).

Thus, even though BioNumerik believes that the Code of Federal Regulations, as promulgated under 13 C.F.R. and 37 C.F.R., is both convoluted and unclear with respect to the application and interpretation of "affiliation" and its impact on Small Entity status, BioNumerik has decided, out of an abundance of caution and of its own volition, to no longer claim Small Entity status, as defined under 37 C.F.R. §§ 1.27(a)(1) – (a)(3). Although BioNumerik continues to believe that it is exactly the type of entity that should be afforded the benefit of Small Entity status, this Change of Entity Status and Payment of Fees Under 37 C.F.R. § 1.28(c) petition is being filed with the United States Patent and Trademark Office ("USPTO") out of an abundance

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of caution in order to correct any errors that may be seen to exist, should it later be determined that BioNumerik was not, or is not, entitled to claim Small Entity status.

Accordingly, BioNumerik is filing this Change of Entity Status and Payment of Fees Under 37 C.F.R. § 1.28(c) petition to pay any deficiencies and correct any errors in connection with BioNumerik's entity status as it relates to the above-referenced patent. In addition, this filing shall also serve as notification in accordance with 37 C.F.R. § 1.27(g)(2) that BioNumerik will no longer be claiming entitlement to Small Entity status with respect to the above-referenced patent. It should be noted, however, that BioNumerik is not stating, nor is it admitting or affirming, that it is a Large Entity (as defined under 13 C.F.R. § 121) and BioNumerik reserves its right to re-elect Small Entity status should circumstances warrant.

Table I, attached hereto, sets forth the following information: (i) an itemized listing of each particular type of fee that was previously paid by BioNumerik to the USPTO as a Small Entity for the above-referenced patent; (ii) an itemized listing of the amount of fee payments previously made by BioNumerik to the USPTO as a Small Entity for the above-referenced patent; (iii) an itemized listing of the Large Entity payment fee proscribed for each of such fee payment types based on the current fee amount for the respective payment types in accordance with 37 C.F.R. § 1.28(c)(2)(i); and (iv) an itemized listing of the amount of the deficiency that is currently being paid by BioNumerik to the USPTO for each of the itemized Small Entity fee payments for the above-referenced patent with the total deficiency amount paid, as required by 37 C.F.R. § 1.28(c).

CONCLUSION

As itemized in Table I, a total of \$2845.00 is being paid by BioNumerik to the USPTO to cover any deficiencies in fees owed in connection with BioNumerik's entity status, as discussed above. The Commissioner is hereby authorized to charge the aforementioned amount, as well as any other fees that may be due (or credit overpayment of same) to Deposit Account No. 022338 (Ref. No. X-0211). If there are any questions, the Maintenance Fee Department is encouraged to contact the undersigned.

Respectfully Submitted,



Date: November 19, 2010

Scott A. Whitaker, Ph.D., J.D.
Attorney for Applicant
Registration No. 53,765

Senior Intellectual Property Counsel
BioNumerik Pharmaceuticals, Inc.
8122 Datapoint Drive
Suite 1250
San Antonio, Texas 78229
scott.whitaker@bnpi.com